

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

RM-10522

Petition for Rulemaking to Define
“Captured” and “New” Subscriber Lines
For Purposes of Receiving Universal
Service Support, Pursuant to 47 C.F.R. §
54.307 *et seq.*

**COMMENTS OF THE RURAL IOWA INDEPENDENT TELEPHONE ASSOCIATION
IN SUPPORT OF THE NATIONAL TELECOMMUNICATIONS COOPERATIVE
ASSOCIATION PETITION FOR EXPEDITED RULEMAKING**

COMES NOW Rural Iowa Independent Telephone Association (“RIITA”) pursuant to Section 1.401 of the Federal Communications Commission’s (Commission or FCC) rules hereby submits comments in support of the petition for Expedited Rulemaking of the National Telecommunications Cooperative Association.

1. RIITA is a non-profit association of rural independent telephone companies, representing approximately one hundred and thirty Iowa incumbent local exchange carriers. Member carriers serve fewer than 20,000 access lines and most members are exempt rural telephone companies pursuant to section 251(f)(1)(A) of the Telecommunications Act of 1996. 47 U.S.C. § 251(f)(1)(A).

2. RIITA has an interest in this proceeding because its members provide service in rural, high-cost areas throughout Iowa. Association members have invested in facilities

needed to fulfill their obligations to serve consumers in their service areas. The viability of federal universal service support is critical to the continuation of adequate, affordable and comparable services to customers in the areas served by Association members.

3. NTCA asks for a narrow proceeding to adopt interim measures needed to prevent erosion of universal service in rural, insular and high cost areas. The Commission should grant NTCA's petition and promptly initiate a rulemaking to adopt the rules that NTCA proposes.

4. NTCA asks the Commission to define terms used in 47 C.F.R § 54.307, a rule enacted in 1997. When the Commission adopted the rule it stated that it intended to provide support to competitive eligible telecommunications carriers (CETCs) that replaced the service of the incumbent or provided service to new customers.¹ Unfortunately, the Commission did not define the terms "captured" or "new." As a result, support is being indiscriminately provided to CETCs that file loop counts with the Universal Service Administration Company.² In fact, CETCs that have no loops are only required to file the total number of customers within a service area to receive support. This regime is resulting in duplicative support which is contrary to the goals of universal service.

5. The rules providing for "identical support" to competitors were based on the theory that they would promote "competitive neutrality," an additional universal service principle adopted by the Commission in 1997 but not listed in the 1996 Telecommunications Act. The rules, however, have had the opposite effect. They have created unfair competitive

¹ NTCA Petition at 11.

advantages for CETCs and imposed an undue burden on the public in the process.³ Competitive neutrality is a fiction because CETCs do not have the carrier of last resort obligations that are imposed on incumbent local exchange carriers (ILECs). Moreover, wireless CETCs getting the same support as ILECs are often held to a different service quality standard than that of ILECs and they do not have equal access obligations like the ILECs. In the long run, the consumer will not benefit from rules which view high cost and access support as opportunities to create competition instead of sustaining affordable and comparable service in rural, high-cost and insular areas. The escalating support to CETCs demonstrates that an expedited proceeding is needed to address the distortions that are created by the gaps in the Commission's rules.

6. When the FCC adopted the "identical support" rule in 1997, it believed that CETCs would have to "win" a line before obtaining support. The FCC said, "We conclude that paying the support to a CLEC that wins the customer's lines or adds new subscriber lines would aid the emergence of competition."⁴ The FCC also thought that competitive neutrality would be furthered because the States would only designate CETCs in service areas where they would in

2 NTCA Petition at 3.

3 See, for example, the Petition for Declaratory Judgment filed by ACS of Fairbanks, Inc. which demonstrates how a CLEC that acquires unbundled network elements at Total Element Long Run Incremental Cost (TELRIC) prices obtains a windfall when it gets support based on the incumbent's cost, CC Docket No. 96-45.

4 *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8932, ¶ 287

fact provide service.⁵ The Commission believed that CETCs could not gain competitive advantages by serving only low cost areas while gaining high cost support. This belief has proved wrong. CETCs can still choose to serve only lower costs customers since the FCC has sanctioned state decisions holding that there is no requirement that they actually serve customers before being certified and they need only advertise throughout the entire service area. States have not imposed measures to prevent low cost competitors from taking advantage of the rules. As an example, the Iowa Utilities Board does not impose any requirement on an ETC applicant that the applicant demonstrate it will serve high-cost customers and Iowa does not require that any actual service be available prior to granting ETC status.

7. RIITA supports the following changes which are intended to define “captured” and “new” as used in existing rules:

47 C.F.R § 54.5 Terms and Definitions.

Captured Subscriber Lines. As used in 47 C.F.R. § 54.307(a), a CETC captures an existing incumbent LEC subscriber line when the incumbent LEC no longer provides the subscriber with the services defined in 47 C.F.R. § 54.101. When a subscriber takes service from a CETC but continues receiving the services defined in 47 C.F.R. § 54.101 from the incumbent LEC, the CETC has not captured the incumbent LEC subscriber’s line for purposes of receiving support.

New Subscriber Lines. As used in 47 C.F.R. § 54.307(a), service to a new subscriber line means services defined in 47 C.F.R. § 54.101 provided by a CETC to a subscriber that has not previously received 47 C.F.R. § 54.101 services from the incumbent LEC operating in the service area.

Customer Billing Address. As used in 47 C.F.R. § 54.307(b), (c) and (d), a customer billing address includes the customer’s full name, the customer’s complete mailing address used for billing purposes, and the

⁵ *Id.* 8933, para. 289.

date the customer began receiving service from a CETC or incumbent LEC.

8. In addition, RIITA supports the addition of 47 C.F.R. § 54.307(d) below:

47 C.F.R. § 54.307 Support to a Competitive Eligible Telecommunications Carrier.

47 C.F.R. § 54.307(d), *Duplicative Support Prevention.* In circumstances where the incumbent LEC and one or more CETCs are reporting working loops in the incumbent LEC's service area pursuant to paragraphs (b) and (c), the Administrator, upon the written request of the incumbent LEC, the CETC, or pursuant to its own authority, shall initiate an investigation to determine whether more than one carrier is receiving support for the same subscriber, or subscribers, at the same time. As part of the investigation, the Administrator shall require the incumbent LEC and CETCs to file, under a protective order, a report listing the customer billing address for each working loop reported to the Administrator pursuant to paragraphs (b) and (c). The customer billing address reports shall be filed in alphabetical order by customer last name within 10 business days after issuance of a written request from the Administrator. As part of the investigation, the Administrator will compare the customer names, addresses, and dates of service for each working loop filed by carrier to determine whether support is being distributed to more than one provider for the same customer simultaneously. If the Administrator determines that any CETC-reported working loop does not meet the definition of "captured" or "new," it shall discontinue support for those CETC working loops and take other appropriate measures to avoid duplication of support.

9. The Iowa Utilities Board has granted at least seven petitions for ETC designation. These grants will result in more duplicative support unless the rules are modified to preserve the intent that the FCC had when it established the rules in 1997. RIITA believes that the long-term sustainability of universal service will be promoted by enactment of NTCA's proposed changes.

CONCLUSION

For the above stated reasons, the Rural Iowa Independent Telephone Association urges

the Commission to grant NTCA's petition.

Respectfully Submitted,

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